

EXHIBIT H

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JAMES WILSON, et al)
)
Plaintiff,)
)
v.) C.A. No. 05-399-JJF
)
STANLEY TAYLOR, et al.)
)

AFFIDAVIT OF RICK KEARNEY

I, Rick Kearney, having been duly sworn by law, do hereby depose and state as follows:

1. I am employed by the State of Delaware Department of Correction ("DOC") as the Bureau Chief for the Bureau of Prisons. At all times relevant to the allegations in the Complaint, I held the position of Warden at Sussex Correctional Institution. ("SCI"). I held that position from January 1994 until February 2007.

2. I have read the plaintiffs' complaint and dispute the allegations therein.

Retaliation Claim

3. Plaintiff Wilson was transferred from the Merit Building in March of 2006. Wilson was transferred because of an ongoing investigation involving multiple parties. I assigned Staff Lt. Earl Messick to conduct an institutional investigation and report his findings to me.

4. Staff Lt. Messick conducted the investigation and interviewed several parties, including James Wilson. I reviewed the results and made the determination that Wilson could not be returned to the Merit Building.

5. This determination was made because of the findings from the investigation. Wilson was not transferred for writing grievances. Wilson was transferred for legitimate security reasons within the institution.

6. Wilson wrote to me in April of 2006 (letter attached hereto as Exhibit H-1) regarding his classification and status. I responded by memorandum (attached hereto as Exhibit H-2) on May 5, 2006 and informed him that his classification and status would be determined upon conclusion of the investigation.

7. The investigation results were submitted to me in May of 2006 and Wilson was classified by the Multi-disciplinary Team ("MDT") to the Delaware Correctional Center ("DCC.") Greentree program on May 31, 2006 (attached hereto as Exhibit H-3). This classification was approved and Wilson was transferred to DCC on June 6, 2006.

Equal Protection Claims

8. SCI. does not maintain policies that racially discriminate. Classification, security level, employment, treatment, programming, education, and disciplinary decisions are all subject to a multi-level process and review within the institution. The process requires approval or denial at several levels, each involving different staff, including treatment workers, correctional officers, and administrative level workers. Race does not play a factor in any decision made at any level.

9. I have made these statements based upon my personal knowledge, specialized training, and experience as an employee of the Department of Correction.

Rick Kearney
Rick Kearney

SWORN AND SUBSCRIBED before me this 20th day of July, 2007.

Christine S. Dulin
Notary

Christine S. Dulin
My Commission Expires
August 18, 2007

RECEIVED

MAY 01 2006

SCI WARDEN'S OFFICE

IN THE NAME OF ALLAH, THE Beneficent, THE Merciful,
AS-SALAM-ALAIKUM
(peace be unto you) 4/29/06

May this letter find you in the best of health,
mentally, physically and spiritually.

This letter is to inquire about why am I still placed
in the P.I. build? Also, how long is this investigation?

There is a room in the merit building open and I
request and suggest that I be given this room

Firstly, I have done nothing wrong to be moved from the
merit/building.

Therefore, my rights to procedural due process is being
violated, see Brown v. Plaut, 131 F.3d 163, 169 (D.C.Cir. 1997)
Inmate's placement in Administrative segregation would violate
due process clause if inmate had liberty interest in avoiding
segregation and inmate did not receive due process)

HARPER V. YOUNG 64 F.3d 563, 566 (10th Cir. 1995) (inherent constitution
liberty interests arise when person has acquired substantial
freedom such that deprivations requires due process protection).

Right to Equal treatment: I know that there was a
inmate under investigation in the Merit building AND
his room (cell) was held for him and when he was

000409

H-1

Exonerated he was given his EXACT cell back and his investigation did not exceed the exact limits of investigation.

SEE DEWALT v. CARTER, 224 F.3d 607, 619 (7th Cir. 2000)
Also, ATKINSON v. TAYLOR, 316 F.3d 257, 270, 30 (Cir. 2003)

Inmate Wilson is not being equally Treated when it comes to investigation as other inmate has been.

Lastly, because I told the truth I should not have been Retaliated against. I was moved for speaking the Truth not an investigation, Therefore, I was being Retaliated against.

SEE CORNELL v. WORDS, 69 F.3d 1383, 1387, (8th Cir. 1995)
(1st Amendment implicated because prisoner Alleged Transfer in Retaliation for Cooperating with misconduct investigations of prison guard).

Prison officials may not retaliate against a prisoner for exercising his first amendment Right.

My liberties has been taken from me and you have the authority to restore them back. I'm asking to be moved back to the main building and restored all liberties.

James A. Wilson
cc: Deputy Warden
Ben Schwartz Esq.

D00410

Memorandum

Date: 5/5/2006
To: James Wilson
From: Warden Kearney *R. K.*
RE: Correspondence

I received your letter dated April 29, 2006. Your classification and housing will be determined at the conclusion of the investigation that is being conducted by S/Lt. Messick.

Cc. S/Lt. Messick

P. Ditto

5/5/2006

1

H-2

D00408

**DELAWARE DEPARTMENT OF CORRECTION
RECLASSIFICATION FORM (WOMEN AND MEN)**

OFFENDER NAME: Wilson James SBI #: 1103663 DOB: 10/26/64 DATE: 5/18/06
 LAST FIRST MIDDLE INITIAL

INSTITUTION: SCI Prior Classification Date: 3/20/06

CURRENT SECURITY: Comto/Minimum Minimum Medium Medium/MPO Maximum Max/MPO

SENTENCE LENGTH: 18/10/10 EFF. DATE: 12/10/99 STRD: 11511 PED: 1 1 TIS: NON-TIS:

RISK REASSESSMENT

SEVERITY OF CURRENT OFFENSE FOR WHICH INCARCERATED Fel Isl (VOP X 3) Consprl, Thfst, usc/Tres Jeff Co. 5-52
 Low Severity 0
 Moderate Severity 2
 High Severity 4
 Highest Severity 6 16

OTHER OFFENSES/BAIL STATUS

None or one or more incidents of FTA (capias issued) or military AWOL 0
 Active Federal, including Immigration and Naturalization Service and/or State warrant or charge(s) with bail of \$5,000 to \$49,999 2
 Pending charges without bail (not a bailable offense, include Violation of Parole) or bail of \$50,000 or more 4 0

ESCAPE/FAILURE TO APPEAR (FTA) HISTORY

Other Offenses(s)/Bail Amount: none (date and type/class)

None or one or more incidents of FTA (capias issued) or military AWOL 0
 Walk-off from work release, furlough, Delaware Psychiatric Center, community and/or outside job assignment, courtrooms, police (city, state, military, etc.), Recovery Center within the past 3 years 2
 Attempted escape from a secure correctional institution within the past 5 years or escape from a secure facility ten + years ago 3
 Escape from a secure correctional institution within the past ten years 5 0

CURRENT AGE

Current Age: 41

Age 39+ 0
 Age 23 years or less 1
 Age 28-38 2
 Age 24 - 27 3 0

SEVERITY OF CRIMINAL HISTORY IN THE LAST TEN (10) YEARS

Most Serious Prior Felony Conviction: none

No prior conviction 0
 Low Severity conviction 0
 Moderate Severity conviction 2
 High Severity conviction 3
 Highest Severity conviction 4 0

NUMBER OF CLASS I/MAJOR DISCIPLINARY FINDINGS OF GUILT (within the past eighteen months)

None 0
 1 Disciplinary Finding of Guilt 2
 2-3 Disciplinary Findings of Guilt 3
 4+ Disciplinary Findings of Guilt 5 0
 Actual Number of Class I Disciplinary Findings: _____

INSTITUTIONAL MISCONDUCT HISTORY (Consider Institutional reports during last 5 years)

First incarceration or no prior Major/Class I Institutional Reports 0
 Major/Class I - Non Predatory Institutional Misconduct Report \geq 36months 1
 Major/Class I - Non Predatory Institutional Misconduct Report within last 36 months
 or Predatory/Assaultive \geq 36mths 3
 Major/Class I - Predatory/Assaultive Institutional Misconduct Report w/in 13 - 36 months 5 0
 Major/Class I - Predatory/Assaultive Institutional Misconduct Report within past 12 months 7

Most Serious Institutional Misconduct Report: _____
 Date of Most Serious Misconduct Report: _____

PERFORMANCE IN TREATMENT PROGRAMS/WORK ASSIGNMENTS

Completed all recommended program(s) AND is currently working	Program Status: 2
Completed some programs, is working and on waiting list for other recommended programs .....	..... 1
Enrolled in recommended program or no treatment recommended and is working .....	..... 0
Medically discharged/excused or successfully completed all recommended programs .....	..... 0
On waiting list for recommended program and work, due to lack of availability .....	..... 0
Dropped out or failed to complete or was dismissed from program and/or work prior to completion .....	..... 2
Unsuccessful (refused work and/or program participation) .....	..... 3

RISK ASSESSMENT SCORE SUBTOTAL: 16

SUPPLEMENTAL SCORING/TIME REMAINING: (to be applied in all cases where less than ten (10) years have been served)

Has served at least 10 years .....	..... 0
Up to 4.99 years remaining to be served .....	..... 1
5 to 9.99 years remaining to be served .....	..... 2
10 to 14.99 years remaining to be served .....	..... 3
15 or more years remaining to be served .....	..... 4

2

FINAL RISK ASSESSMENT SCORE TOTAL: (Risk Assessment Score Subtotal plus Supplemental Score)

8

Risk Assessment Scale: Community/Minimum	Minimum 02 to 04	Medium 05 - 08	Medium 09 - 16	Maximum 17 or more
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Preliminary Security Level (Check scored security level)

Community/Minimum	<input checked="" type="checkbox"/> Minimum	Medium	Maximum
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OVERRIDES:

Mandatory Policy Overrides (MPO)

Prior escapes (requires Maximum Security placement)
 Prior staff assaults (requires Maximum Security placement)
 240 or more months remaining to serve (placement cannot go below Medium)
 Offense is rated Highest Severity (placement cannot go below Medium)

Discretionary Overrides (Increase level)

Pattern of assaultive/predatory behavior in institutions and/or the community
 Documented membership in security threat group
 Protective Custody/Need for separation
 Pending disciplinary actions
 Mental/Medical issues
 Other

Discretionary Overrides (decrease level)

Time remaining to serve
 Need for transition
 Other

Justification for override(s): MPO

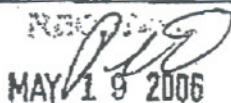
Recommended Security Level (Check recommended security level)

Community/Minimum	Minimum	Medium	<input checked="" type="checkbox"/> Medium/MPO	Maximum	Maximum/MPO
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Comments:

Correctional Worker

Supervisor Signature and Comments



MAY 19 2006

Date

Classification Officer/Unit Supervisor

Treatment Administrato.

Date

Comments:

D00002

CLASSIFICATION DECISION PAGE

Name: MilsonJarnesSBI: 163663

CRIMINAL ASSESSMENT SCALE:	Community/Minimum -2 to 04	Minimum 05 - 08 8	Medium 09 - 16	Maximum 17 or more
Per Numeric Score				

Override: Yes No If yes, briefly specify reason: MPO

Mandatory Policy Override Removal Approved By Warden/Designee _____

Date: _____

	Present Classification	ICB or MDT Recommendation	IBCC Recommendation/ Decision	CICB Recommendation/ Decision	IRCB Decision
Security	Med	cont	GPPR		
Housing	Med	DCC	Loc App Applied		
Job	Ed. Aide	WA	GPPR		
Education	Lead	cont	GPPR		
Therapy	M.H.G	Greentree	Loc App Applied		
Other					
Other					
Next Review Date		Month Year <u>5/09</u>	Month Year <u>5/07</u>	Month Year <u>05/07</u>	

MDT or ICB Members Present	<u>Milson</u>	<u>C.T. Howard Fish</u>	Vote: <u>2-0</u>
DT or ICB Chairperson	<u>DD</u>		Abstention: <u>0</u>

Comments: Due to MPO, security remains medium. The MDT recommends w/a job, Greentree North, and DCC housing.

IBCC Chairperson:	<u>J. Willis</u>	Date: <u>5/30/06</u>	Vote: <u>2-0</u>
Override (include justification in comments)	Comments:		Abstention: <u>0</u>

W.M. Milson has been requesting Greentree North placement as a housing for SCI & Outpatients.	Date: <u>5/31/06</u>	Vote: <u>2-0</u>
CICB Chairperson:	<u>M. Headen</u>	Abstention: <u>0</u>

Override (include justification in comments)	Comments:	Approved:
		Disapproved:

IRCB Chairperson:	Date:	Approved:
Override (include justification in comments)	Comments:	Disapproved:

D00003